

What is family mediation?

- Mediation is a process that involves an independent third person who assists parties involved in a family dispute to reach a resolution.
- Family mediation can be used to settle any of the following issues:
 - Arrangements for children
 - Financial arrangements
 - Dividing up property
 - Any other practical issues to do with separation and divorce.

Mediation differs from in-court or CAFCASS conciliation in that it is a more intensive process designed to achieve longer-term agreements through improved communication and co-parenting

What is publicly funded family mediation?

The Legal Services Commission (LSC) is responsible for the administration of the legal aid scheme in England and Wales. As part of this scheme the LSC provides mediation through LSC contracted providers under fixed fees.

- Publicly funded mediation is available for any legal dispute arising out of a family relationship, including disputes concerning the welfare of children or which may give rise to family proceedings.
- Funded mediation is available to divorcing and separating couples whether or not they have children and to extended family members, e.g. grandparents who are involved in a family dispute such as contact.
- Funded mediation is provided where the mediator is satisfied that mediation is suitable to the dispute, the parties and all the circumstances.
- Publicly funded mediators can involve children in mediation in appropriate cases.

The requirement to consider mediation

- Clients who want to be publicly funded by the LSC are required to consider the use of mediation (although not to participate in the mediation itself) if they wish to issue court proceedings.
- Mediation should also be considered at any time during proceedings including a “contact activity direction” made by the court.

- Clients can refer themselves to a mediator or can be referred by other agencies including CAFCASS who consider that mediation may be helpful in the case.
- The court can adjourn a case for mediation to be considered or undertaken. It is helpful if cases can be re-listed without delay if that is necessary in the circumstances of the particular case.

Funding for mediation

- Provided at least one of the parties is financially eligible the LSC will pay for both parties' assessment meetings i.e. a meeting with a mediator to consider whether mediation is suitable. This applies even where the court makes a "contact activity direction" and is to encourage the use of mediation and increase public awareness of the benefits of mediation.
- For those who are financially eligible all mediation sessions themselves will be funded by the LSC. In cases where one party is publicly funded then the LSC will pay a fee for that client and the mediation service will agree a separate payment with the private paying client.
- The publicly funded client is also entitled to independent legal advice to support the mediation process and, if appropriate, the drawing up of a court order by consent.
- Financial eligibility limits for mediation are the same as for other publicly funded legal services but no client contribution is payable. Details can be found at http://www.legalservices.gov.uk/civil/guidance/eligibility_calculator.asp
- The costs of mediation itself are always exempt from the Statutory Charge and there is no system of financial contributions. In addition, the costs of legal advice to support mediation are also exempt from the Statutory Charge at Legal Help level and are limited at Family Help (Lower) to the excess costs above the exceptional limit – which takes the case outside payment by a standard fee. However, if the case is dealt with under Family Help (Higher) or Legal Representation the charge will apply to all the actual legal costs paid by the LSC (excluding any settlement fee paid to the solicitor).

Exemptions to the requirement to consider mediation

Under the LSC Funding Code both solicitors and mediators have the power to determine whether mediation is suitable for the dispute, the parties, and all the circumstances. The following are factors that will automatically determine that mediation is unsuitable:

- if the client is applying for Legal Representation on an emergency basis; or

- if the client is applying for a domestic violence injunction.

Issues of domestic abuse can also be an automatic exemption from the need to consider mediation, if the applicant has made an allegation of domestic abuse against a party to the mediation AND this has resulted in a police investigation or the issuing of civil proceedings for the protection of the applicant in the last 12 months. Otherwise the mediator will decide whether mediation is suitable in a case where domestic abuse is alleged.

Exemptions to the requirement to consider mediation include:

- if the dispute is not suitable for mediation
- if the other party does not wish to attend,
- if mediation has been attempted but has broken down completely.
- applications for funding injunctions to prevent, and orders to set aside disposal of property under s37 of the Matrimonial Causes Act 1973 or for Inheritance (Provision for Family and Dependants) Act 1975 proceedings.

Finding a mediator

To find a local mediator you can visit:

- The Legal Services Commission website www.clsdirect.org.uk or contact the Community Legal Advice Helpline on 0845 345 4 345; or
- Family Mediation Helpline on 0845 602 6 627

Contact Us

If you have any queries on publicly funded family mediation please contact us on family@legalservices.gov.uk. You can also contact the LSC's regional family lead staff based in its Regional Offices across England and Wales. Their contact details are: